

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3400 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ARVIND @ SINKANDAR @ LOPOKANTILAL PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR DP JOSHI , AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/11/1999

ORAL JUDGEMENT

1. An order was passed by the Commissioner of Police, Ahmedabad city, Ahmedabad on 26th February 1999 detaining the petitioner under the PASA Act, in exercise of powers under section 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short], holding that the petitioner is a bootlegger involved in activities resulting into disruption of public order. The detaining

authority took into consideration the six offences registered against the petitioner under the Bombay Prohibition Act. The authority also considered the statements of two witnesses in respect of unregistered offences and ultimately recorded a satisfaction that it was a fit case where privilege in exercise of powers u/s 9[2] of the PASA Act is required to be exercised. The authority also considered that detention under the PASA Act was the only remedy available for preventing the petitioner immediately from pursuing his anti social activities.

2. The petitioner has challenged the order of detention on various grounds. One of the grounds is that the statements of witnesses were recorded on 22nd February 1999 and 23rd February 1999 and the same were verified on 26th February 1999 and the detention order came to be passed on that very day i.e. 26th February 1999. There is therefore non-application of mind by the detaining authority in passing the order of detention.

3. Mr. S.R..Patel, learned advocate appearing for petitioner has pressed into service the above ground alone and has placed reliance in the decision as reported in 1993[2] GLR 1659 [Kalidas Chandubhai v/s State of Gujarat].

4. Mr.D.P.Joshi, learned AGP tried to oppose this petition on the ground that the order is passed after application of mind and after considering all relevant factors.

5. In view of the above factual situation, the petition deserves to be allowed only on the ground that the detaining authority verified the statements on 26th February 1999 and passed the order of detention on the same day. There was no time lag sufficient enough to facilitate the detaining authority to consider whether privilege u/s 9[2] of the PASA Act was really required to be exercised or not and therefore, the order would stand vitiated. The decision in case of Kalidas Chandulal Kahar [supra] relied upon by Mr.Patel would apply this case as the facts are similar.

6. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad on 26th of February 1999 in respect of the petitioner Arvind alias Sikandar alias Lepo Kantilal Parmar, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is

made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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